

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**EL RIO SANTA CRUZ NEIGHBORHOOD  
HEALTH CENTER<sup>1</sup>**

**Employer**

**and**

**Case 28-RD-965**

**ELIZABETH A. WISELEY, Employee**

**Petitioner**

**and**

**AMERICAN FEDERATION OF STATE, COUNTY,  
AND MUNICIPAL EMPLOYEES, LOCAL 449, AFL-CIO**

**Union**

**DECISION AND DIRECTION OF ELECTION**

On June 8, 2007, Elizabeth A. Wisely, an employee, (Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act (Act), seeking to decertify the American Federation of State, County, and Municipal Employees, Local 449, AFL-CIO (Union), which represents employees employed by El Rio Santa Cruz Neighborhood Health Center (Employer) in Tucson, Arizona. The Union contends that an unsigned successor collective-bargaining agreement (tentative agreement) dated May 29, 2007, bars the petition. The Union argues that an electronic transmittal of the tentative agreement by the Employer to the Union effectively served as an adequate substitute for the parties' signatures. The Petitioner and El Rio Health Center Employees Union (Intervenor) contend that the tentative agreement does not serve as a bar to the petition. The Employer took no position as to whether the tentative agreement serves as a contract bar. For reasons discussed more fully below, I find that the tentative agreement does not serve as a bar to the petition.

The Petitioner, Intervenor, and the Employer contend that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act, while the Union argues that the Intervenor is not a labor organization. The parties did not state their positions on the labor organization status of the Union. For reasons discussed more fully below, I find that the

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<sup>1</sup> The name of the Employer and the Union are set forth in accordance with the stipulation reached by the parties at hearing.

Intervenor and Union are each labor organizations within the meaning of Section 2(5) of the Act.

The parties stipulated that two units were appropriate for the purposes of collective-bargaining: a professional employees unit and a nonprofessional employees unit. The professional employees unit is governed by the principles established in *Sonotone Corp.*, 90 NLRB 1236 (1950), and I will refer to this professional employees bargaining unit as Unit A or Voting Group A. The unit includes all full-time and regular part-time professional employees, including dental hygienists, certified nurse midwives, certified nurse midwives – school based, family nurse practitioners, adult nurse practitioners, pharmacists, dentists, physicians, including physician - family medicine, physician - internal medicine, physician - internal/infectious diseases, physician - pediatric, physician - urgent care, physician - OB/GYN, and Unit Chiefs, but excluding all other employees, probationary employees, temporary employees, seasonal employees, provisional employees, training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act, employed by the Employer at its facility in Tucson, Arizona.

The other unit, stipulated to by the parties, is a nonprofessional employees unit which I will refer to as Unit B or Voting Group B. It consists of all full-time and regular part-time nonprofessional employees, including accounts receivable specialists 3, asthma evaluation assistant, behavioral health specialists 2, behavioral health specialists 3, behavioral health technicians, building maintenance technicians, certified nursing assistants, care coordinator 1, charge entry 1, clerk-receptionists, coder reviewer educator, community health advisor, community health advisor II, customer care coordinators, customer care representatives, dental administrative assistants, dental assistant 3, dental authorization clerks, dental environmental aides, dental hygienists, dental office specialists, dental member service representatives, dental receivable specialist 1, director of volunteer services, driver-couriers, eligibility coordinators, eligibility outreach employees, health care advocate & coordinator, health educator, information services clerical support, laboratory report coordinator, Licensed Practical Nurses (LPN's), LPN leads, material-purchasing assistant, medical assistants, medical laboratory assistants, medical office specialists, medical-dental record clerks 2, medical records clerk 1, medical records clerk 2, medical receivable specialists 2, medical services representatives, medical technologists, medication coordinator, member services representatives, member service schedule coordinator, member services specialists, network technicians, nutritionists, nutrition aide 2, OB plan monitor, office assistants, outreach coordinators, patient advocates, patient prep specialists, pharmacy technician 2, pharmacy technician 3, Pima Community Access Program customer care coordinators, prescription delivery drivers, radiological technicians, receiving-distribution clerks, referral clerks, registered nurses, research project coordinators, respiratory therapists, sterilization technicians, switchboard operators, treatment adherence coordinator, unit clerks, ultrasound technicians, but excluding all other employees, probationary employees, temporary employees, seasonal employees, provisional employees, training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act employed by the Employer at its facility in Tucson, Arizona.

For reasons discussed more fully below, I find the bargaining units stipulated to by the parties are appropriate for collective bargaining. In keeping with Board precedent, I will order a *Sonotone* election be conducted, whereby the professional employees will decide if they wish to be represented in an overall unit which includes nonprofessional employees.

## DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

**1. Hearing and Procedures:** The petition in this matter was filed on June 8, 2007, and the Notice of Representation Hearing was sent to all parties and their counsel of record on June 11, 2007, setting the matter for hearing on June 15, 2007. On June 12, 2007, the Petitioner requested a change of venue from Phoenix, Arizona, to a location in Tucson, Arizona. On the same date, the Employer requested that the hearing be postponed to June 21, 2007. On June 13, 2007, pursuant to the parties' request and unopposed, the hearing was rescheduled to June 19, 2007, and was held on that date in Tucson, Arizona before a hearing officer of the Board.

On June 25, 2007, the Union filed a Motion with the undersigned seeking to reconvene/reopen the hearing and postpone the filing of post-hearing briefs. In its motion the Union argued, among other things, that the transcript of the hearing provided by the reporting service was incomplete. On June 28, 2007, the Union filed a second motion requesting a ruling on its June 25, 2007 motion. On June 29, 2007, I denied both of the Union's motions on the basis that the official reporting service had supplied a correct and accurate transcript to all of the parties. Notwithstanding my denial of both of the Union's motions, I agreed to extend the deadline for the filing of briefs to the close of business on July 6, 2007. In its brief, the Union repeated the argument contained in its motions by suggesting that that the official transcript is inaccurate and incomplete and, therefore, requires that I dismiss the petition.

Having reviewed the transcript carefully, I am convinced that it is a complete and accurate record of the proceedings. Accordingly, I reject the Union's contention in this regard. The Union also contends in its brief that the petition should be dismissed claiming that the Board's hearing officer, "... tried to testify as to the labor organization status of the Intervenor" and that the record shows that the Intervenor was formed for the sole purpose of decertifying the Union. I have reviewed the transcript and find insufficient evidence to support the contention that the hearing officer engaged in the conduct ascribed to him by the Union. Similarly, and as discussed more thoroughly below, the record fails to establish that the Intervenor's sole purpose is to decertify the Union. I, therefore, reject these contentions.

The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

**2. Jurisdiction:** At the hearing, the parties stipulated, and I find, that the Employer, an Arizona corporation, maintains various offices and places of business in Tucson, Arizona, including an office at 839 West Congress Street, Tucson, Arizona, (Employer's facility), where it is engaged in providing non-acute care health services. During the 12-month period ending June 8, 2007, the Employer provided services valued in excess of \$50,000 pursuant to Medicare and other contracts with the United States Government and Arizona State Government. During the same period of time, the Employer derived gross revenues in excess of \$250,000. Based on the record evidence, I find that the Employer is an employer within the meaning of Section 2(6) and 2(7) of the Act; it is engaged in commerce within the meaning of the Act; and is a health care institution within the meaning of Section 2(14) of the Act, and therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

**3. Labor Organization Status and Claim of Representation:** For reasons discussed more fully below, I find that the Union and Intervenor are labor organizations within the meaning of Section 2(5) of the Act.

**A. Facts**

**1. The Intervenor**

The record reveals that during the 12 to 18-month period prior to the hearing, employees began discussing the possibility of forming a new organization to represent employees. During a 12-month period during this time frame, about 30 to 40 employees participated in at least ten discussions or meetings on the topic of forming the Intervenor to represent employees. Some of the employees, who had signed a petition to decertify the incumbent Union, expressed their interest in assisting the Intervenor. On June 7, 2007, about nine employees attended the Intervenor's first formal meeting which lasted about 25 minutes. All attendees signed the meeting sign-in sheet. The minutes reflect that the employees contemplated reviewing and voting on by-laws and nominating and volunteering for committee assignments.

The individuals who volunteered for committee assignments elected the Petitioner to serve as the Intervenor's chairperson. They also gave input on, and voted to adopt, a document entitled "El Rio Health Center Employees Union ERHCEU." The document states, among other things, that the organization is an employee committee whose purpose is to represent and secure better working conditions and wages for employees and that it seeks to provide opportunities for employees to participate in contract negotiations, labor disputes, wages, rates of pay, hours of employment and working conditions. The document further states that employees are free to join or refrain from joining the Intervenor without fear of harassment, intimidation, coercion, threats, or fear of reprisal; that the Intervenor will not discriminate against employees on the basis of political beliefs, race, religion, national origin, sex, marital status, or union membership pursuant to applicable federal and state laws; and that members have the right to participate in democratic elections for committee members or officers, and to fully participate in the Intervenor's decision-making process through

discussions and votes. Membership is specified as being open to all Employer employees with the exception of probationary, agency, seasonal or confidential employees. Finally, the document states that the Intervenor will hold monthly meetings on the first Thursday of each month and that it intends to develop and adopt bylaws and procedures through the input of its committees and a final vote by its membership.

As of the hearing, the Intervenor's membership consisted solely of the nine employees who had affixed their signatures to the sign-in sheet. These individuals signed no other document demonstrating their membership. The Intervenor had no membership cards nor did it require its members to pay dues. Finally, the Intervenor had not filed any grievances and had not met with the Employer in any formal or official meetings.

## **2. The Union**

Employees participate in the Union by serving on the Union's negotiating committee, electing a chairperson to said committee, and voting to determine whether the Union's membership should accept or reject proposed collective-bargaining agreements with the Employer. The Union has represented unit employees since at least October 23, 2003, when it entered into a collective-bargaining agreement set to expire on May 31, 2006, covering the employees' terms and conditions of employment with the Employer. On May 4, 2006, the Union and the Employer, by mutual agreement, extended the parties' contract to May 31, 2007. Prior to May 31, 2007, the Union and the Employer engaged in five or six bargaining sessions in an attempt to obtain a successor agreement.

### **B. Analysis and Determination**

Section 2(5) of the Act states:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

The statutory definition of a "labor organization" has long been interpreted broadly. *Electromation, Inc.*, 309 NLRB 990, 993-94 (1992), enf'd. 35 F.3d 1148 (7th Cir. 1994). To fall within the definition of a "labor organization," the Board has held that employees must participate in the organization and it must exist for the purpose, in whole or in part, of dealing with employers. *Alto Plastic Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). It is the intent of the organization that is critical in ascertaining labor organization status, regardless of the progress of the organization's development and what activities the organization has actually performed. *Edward A. Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980). Under this definition, a new union that has not yet represented employees may be accorded Section 2(5) status if it was formed for the purpose of representing employees. *Coinmach Laundry Corp.*, 337 NLRB 1286 (2002); *The East Dayton Tool & Die Company*, 194 NLRB 266 (1971);

*Butler Manufacturing Company*, 167 NLRB 308 (1967). The fact that a union is in its early stages of development and has not yet won representation rights does not disqualify it as a labor organization. Thus, the Board has found the existence of a bona fide labor organization where a petitioner existed for statutory purposes even though those purposes had not come to fruition because the petitioner had not gained representative status, where employees had participated in its organization and subsequent activities. *Michigan Bell Telephone Co.*, 182 NLRB 632 (1970). See also *Early California Industries*, 195 NLRB 671, 674 (1972); *Roytype Division of Litton*, 199 NLRB 354 (1972). Where an organization lacked a constitution, bylaws, meetings, and Department of Labor filings, the Board found it to be a labor organization because structural formalities are not prerequisites to finding such status. *Yale New Haven Hospital*, 309 NLRB 363 (1992). Similarly, in *Butler*, supra, at 308, the entity found to be a labor organization lacked a constitution, bylaws, dues and initiation fees. In *East Dayton*, supra, at 266, the entity lacked a constitution or officers.

In the instant matter, the record demonstrates that the Intervenor, like the labor organizations in the above-cited authority, exists for statutory mandated purposes. Employees participate in the Intervenor by, among other things, volunteering for committee assignments, electing a chairperson, and participating in the assembly of the Intervenor's basic rules entitled "El Rio Health Center Employees Union ERHCEU." Furthermore, the Intervenor's purpose satisfies the statutory mandate since its defined purpose is to represent and secure better working conditions and wages for employees and provide opportunities for employees to participate in contract negotiations, labor disputes, wages, rates of pay, hours of employment and working conditions. Moreover, as the authority cited above demonstrates, although the Intervenor's purposes have not yet come to fruition, it has no constitution or bylaws, it has yet to file grievances or meet with the Employer, and it has yet to collect dues or initiation fees, these factors do not negate its status as a labor organization.

In its brief the Union cites several cases it claims support a finding that the Intervenor is not a labor organization within the meaning of Section 2(5) of the Act. I find these cases distinguishable. *NLRB v. Peninsula General Hospital Medical Center*, 36 F. 3<sup>rd</sup> 1262 (4th Cir. 1994), dealt with an organization, which unlike the Intervenor, had never adopted "dealing with employers" as one of its primary purposes. *East Chicago Rehabilitation Center, Inc., v. NLRB* 710 F. 2d. 397 (7th Cir. 1983), addressed a group of employees, unlike the employees here, who spontaneously engaged in a work stoppage to protest the employer's unilateral change to the employees' terms and conditions of employment. *NLRB v. Long Beach Youth Center, Inc.*, 591 F. 2<sup>nd</sup> 1276 (9th Cir. 1979), concerned employees, unlike the employees in the instant matter, who, only in protest of working conditions, signed union authorization cards and presented a list of demands to the employer. Finally, *NLRB v. Buzza-Cardozo*, 205 F. 2d 889 (9th Cir. 1953), dealt with employees who had met with the employer; demanded a pay increase; and went on strike the following day when the employer rejected their demand. These cases generally involve spontaneous employee groupings for a finite purpose with none or few of the organizational attributes of the Intervenor herein. Based on the authority I have earlier cited above, I find that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

With respect to the Union's labor organization status, the employees participate in the Union by serving on the Union's negotiating committee, electing a chairperson to said committee, and voting to determine whether the Union's membership should accept or reject proposed collective-bargaining agreements with the Employer. Moreover, the Union exists for the purpose, in whole or in part, of dealing with employers. In this regard, the Union's purposes are manifested through its negotiations with the Employer with respect to two collective-bargaining agreements, its obtaining a now-expired collective-bargaining agreement with the Employer and its administering that agreement during its term. Accordingly, I find that the record evidence clearly establishes that the Union is a labor organization within the meaning of Section 2(5) of the Act

**4. Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act. As noted above, there exists the issue of whether a successor collective-bargaining agreement bars the petition in this case. I shall consider this issue next.

#### **A. Facts**

As noted above, the Union and Employer were parties to a collective-bargaining agreement that expired on May 31, 2006, and was extended to May 31, 2007.

In or about February 2007, the Union requested successor contract bargaining and simultaneously requested information from the Employer in anticipation of the parties' upcoming negotiations. Prior to the commencement of negotiations, the parties orally adopted ground rules for bargaining that did not contain any conditions precedent to satisfy before a new collective-bargaining agreement could be reached.

The Union and Employer met for five or six bargaining sessions but did not initial agreed upon proposals. At 7:00 p.m. on May 29, 2007, the Union and Employer concluded negotiations when the Union withdrew a proposal related to bargaining unit changes. It appears that the Union did so to expedite negotiations because the Employer had indicated that it could not agree to a bargaining unit change without prior approval from the Employer's Board of Directors. Nevertheless, after the withdrawal of this proposal, the Employer informed the Union that it would submit the overall tentative agreement to its Board of Directors for approval. The parties' representatives hugged each other, shook hands, and stated aloud that they had reached an agreement.

The Union and Employer never signed the tentative agreement. The Employer states that it did not do so because it needed the approval of its Board of Directors and because it wanted to await the results of the Union's membership ratification vote. The Union claims that the parties did not sign the agreement because of the late hour negotiations concluded, and because the Employer was charged with memorializing the tentative agreement in an overall writing, and the Employer had agreed to transmit the tentative agreement to the Union via electronic mail (e-mail).

The Employer sent an initial version of the tentative agreement, without any electronic or facsimile signatures, to the Union at 4:16 p.m. on June 1, 2007, stating that it had attached negotiated changes to the expired agreement. The e-mail requested that the Union review the document and provide any necessary feedback. About two hours after its initial transmission, the Employer sent an e-mail to the Union, without any electronic or facsimile signatures, stating that it had inadvertently attached an incorrect copy of the document and attached a corrected version. No other e-mails relating to the tentative agreement were transmitted between the parties. The Union and Employer engaged in several telephone conversations between June 1, 2007 to June 4, 2007, and the Union notified the Employer of typographical errors in the tentative agreement. From June 4, 2007 to June 14, 2007, the Union and Employer had several additional telephone conversations, discussing the best way to convey the tentative agreement changes to employees before the June 14, 2007 ratification vote. The membership ratified the tentative agreement on June 14, following the June 8, 2007 filing of the instant petition.

The Union never advised the Employer that, by making corrections to the tentative agreement, the document was thus consummated, nor did the Union ever suggest to the Employer that the Union and Employer affix signatures to the tentative agreement.

## **B. Analysis and Determination**

The burden of proving the existence of a contract bar rests on the party making such an assertion. *Roosevelt Memorial Park*, 187 NLRB 517 (1970). For contract-bar purposes, it is well established that, a contract must: (1) be signed by both parties prior to the filing of the petition that it would bar; and (2) contain substantial terms and conditions of employment sufficient to stabilize the parties' bargaining relationship. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). As stated by the Board in *Seton Medical Center*, 317 NLRB 87 (1995), "The single indispensable thread running through the Board's decisions on contract bar is that the documents relied on as manifesting the parties' agreement must clearly set out or refer to the terms of the agreement and must leave no doubt that they amount to an offer and an acceptance of those terms through the parties' affixing of their signatures." This does not mean that contracts must be formal documents or that they cannot consist of an exchange of a written proposal and a written acceptance. *Georgia Purchasing, Inc.*, 230 NLRB 1174 (1977). The document signed need not be a formal collective-bargaining agreement, nor must the signatures appear on the same document. Recognizing that parties do not always ceremonially sit down to sign a formal, final document upon the successful conclusion of negotiations, the Board has held that informal documents laying out substantial terms and conditions of employment can serve as a bar, so long as those informal documents are signed. *De Paul Adult Care Communities, Inc.*, 325 NLRB 681 (1998); *Seton Medical Center*, supra at 87; *Television Station WTVV*, 250 NLRB 198, 199 (1980); *Georgia Purchasing*, supra. However, this flexibility does not excuse the parties from the fundamental requirement that they signify their agreement by attaching their signatures to a document or documents that tie together their negotiations, by either spelling out the contract's specific terms or referencing other documents which do so. *Seton Medical Center*, supra at 87-88.



In the instant matter, the Union has failed to carry its burden that its tentative contract with the Employer serves as a bar to the petition. While the agreement contains the substantial terms and conditions of employment, as required by *Appalachian Shale*, the agreement fails as a contract bar due to lack of party signatures. Moreover, the parties never signed the agreement, either in the traditional sense, electronically, or any other manner in which the Board has found a legitimate substitute for the parties' signatures. The Union acknowledges as much in its brief by stating, "The record reveals the parties executed a contract by electronic mail, not by handwritten signatures." To overcome this hurdle the Union argues that *Appalachian Shale*, "should not require a handwritten execution of a contract: that would be too restrictive in this electronic age." Under current Board precedent an unsigned contract, as is the case here, does not serve as a bar to a petition.

Finally, since the Union's contract bar theory fails at the outset for lack of the parties' signatures, I need not make a finding with respect to issues related to conditions precedent to the contract formation. Accordingly, I find that since the parties never signed the agreement, it does not, and cannot, act as a bar to the petition.

**5. Unit Finding:** An examination of the expired collective-bargaining agreement and the tentative collective-bargaining agreement shows that under Article I, "Recognition of the Union," the Union was recognized as the collective-bargaining representative of the employees certified by the NLRB in Case 28-RC-3768. The Certification of Representative of March 7, 1980, defines the unit as follows:

All full-time and regular part-time staff pharmacists, family nurse practitioners, adult nurse practitioner staff physicians, staff dentists and certified nurse midwives employed by the Employer and its facilities and all full-time and regular part-time non-professional employees employed by the Employer at its facilities; excluding all other employees, administrative office clericals, guards and supervisors as defined in the Act.

The expired agreement and the tentative agreement both contain a number of detailed classifications that have since been included by the parties within the above unit. Accordingly, at the hearing, the parties entered into a stipulation defining the classifications that constitute the professional and nonprofessional job classifications currently represented by the Union. The parties understood that any election ordered would be a *Sonotone* election where the professional employees would be given the opportunity to, once again, vote as to whether or not they wished to be included in the nonprofessional unit. The Board has held that where professional employees have voted in a prior election to be included in a nonprofessional bargaining unit, they are entitled to that privilege of self-determination in a subsequent election. *Westinghouse Electric Corporation*, 129 NLRB 846 (1960); *American Medical Response, Inc.* 344 NLRB No. 161 (2005). Accordingly, I will order a *Sonotone* election.

Based upon the foregoing, I find the following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

## **VOTING GROUP A**

All full-time and regular part-time professional employees, including dental hygienists, certified nurse midwives, certified nurse midwives – school based, family nurse practitioners, adult nurse practitioners, pharmacists, dentists, physicians, including physician - family medicine, physician - internal medicine, physician - internal/infectious diseases, physician - pediatric, physician - urgent care, physician - OB/GYN, and Unit Chiefs employed by the Employer at its facility in Tucson, Arizona; but excluding all nonprofessional employees, all other employees, probationary employees, temporary employees, seasonal employees, provisional employees, training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act.

## **VOTING GROUP B**

All full-time and regular part-time nonprofessional employees, including accounts receivable specialists 3, asthma evaluation assistant, behavioral health specialists 2, behavioral health specialists 3, behavioral health technicians, building maintenance technicians, certified nursing assistants, care coordinator 1, charge entry 1, clerk-receptionists, coder reviewer educator, community health advisor, community health advisor II, customer care coordinators, customer care representatives, dental administrative assistants, dental assistant 3, dental authorization clerks, dental environmental aides, dental hygienists, dental office specialists, dental member service representatives, dental receivable specialist 1, director of volunteer services, driver-couriers, eligibility coordinators, eligibility outreach employees, health care advocate & coordinator, health educator, information services clerical support, laboratory report coordinator, Licensed Practical Nurses (LPN's), LPN leads, material-purchasing assistant, medical assistants, medical laboratory assistants, medical office specialists, medical-dental record clerks 2, medical records clerk 1, medical records clerk 2, medical receivable specialists 2, medical services representatives, medical technologists, medication coordinator, member services representatives, member service schedule coordinator, member services specialists, network technicians, nutritionists, nutrition aide 2, OB plan monitor, office assistants, outreach coordinators, patient advocates, patient prep specialists, pharmacy technician 2, pharmacy technician 3, Pima Community Access Program customer care coordinators, prescription delivery drivers, radiological technicians, receiving-distribution clerks, referral clerks, registered nurses, research project coordinators, respiratory therapists, sterilization technicians, switchboard operators, treatment adherence coordinator, unit clerks, ultrasound technicians, employed by the Employer at its facility in Tucson, Arizona; but excluding all professional employees, dental hygienists, certified nurse midwives, certified nurse midwives – school based, family nurse practitioners, adult nurse practitioners, pharmacists, dentists, physicians, including physician - family medicine, physician - internal medicine, physician - internal/infectious diseases, physician - pediatric, physician - urgent care, physician - OB/GYN, and Unit Chiefs, all other employees, probationary employees, temporary

employees, seasonal employees, provisional employees, training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act.

The employees in the professional employee Voting Group A will be asked two questions on their ballot:

- (1) Do you desire to be included with nonprofessional employees in a unit composed of:

All full-time and regular part-time dental hygienists, certified nurse midwives, certified nurse midwives – school based, family nurse practitioners, adult nurse practitioners, pharmacists, dentists, physicians, including physician - family medicine, physician - internal medicine, physician - internal/infectious diseases, physician - pediatric, physician - urgent care, physician - OB/GYN, and Unit Chiefs, and nonprofessional employees, including accounts receivable specialists 3, asthma evaluation assistant, behavioral health specialists 2, behavioral health specialists 3, behavioral health technicians, building maintenance technicians, certified nursing assistants, care coordinator 1, charge entry 1, clerk-receptionists, coder reviewer educator, community health advisor, community health advisor II, customer care coordinators, customer care representatives, dental administrative assistants, dental assistant 3, dental authorization clerks, dental environmental aides, dental hygienists, dental office specialists, dental member service representatives, dental receivable specialist 1, director of volunteer services, driver-couriers, eligibility coordinators, eligibility outreach employees, health care advocate & coordinator, health educator, information services clerical support, laboratory report coordinator, Licensed Practical Nurses (LPN's), LPN leads, material-purchasing assistant, medical assistants, medical laboratory assistants, medical office specialists, medical-dental record clerks 2, medical records clerk 1, medical records clerk 2, medical receivable specialists 2, medical services representatives, medical technologists, medication coordinator, member services representatives, member service schedule coordinator, member services specialists, network technicians, nutritionists, nutrition aide 2, OB plan monitor, office assistants, outreach coordinators, patient advocates, patient prep specialists, pharmacy technician 2, pharmacy technician 3, Pima Community Access Program customer care coordinators, prescription delivery drivers, radiological technicians, receiving-distribution clerks, referral clerks, registered nurses, research project coordinators, respiratory therapists, sterilization technicians, switchboard operators, treatment adherence coordinator, unit clerks, ultrasound technicians, employed by the Employer at its facility in Tucson, Arizona; but excluding all other employees, probationary employees, temporary employees, seasonal employees, provisional employees, training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act.

- (2) By which union, if any, do you wish to be represented for purposes of collective bargaining?

**AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL  
EMPLOYEES, LOCAL 449, AFL-CIO**

**or**

**EI RIO HEALTH CENTER EMPLOYEES UNION**

**or**

**NEITHER**

The employees in the nonprofessional Voting Group B will be asked:

By which union, if any, do you wish to be represented for purposes of collective bargaining?

**AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL  
EMPLOYEES, LOCAL 449, AFL-CIO**

**or**

**EI RIO HEALTH CENTER EMPLOYEES UNION**

**or**

**NEITHER**

If a majority of the professional employees in Voting Group A vote “yes” to the first question, indicating their wish to be included in a unit with nonprofessional employees, they will be so included. Their vote on the second question will then be counted together with the votes of the nonprofessional Voting Group B to determine whether or not the employees in the whole unit wish to be represented by the union. If, on the other hand, a majority of professional employees in Voting Group A vote against inclusion, they will not be included with the nonprofessional employees. Their votes on the second question will then be separately counted to determine whether or not they wish to be represented by:

**AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL  
EMPLOYEES, LOCAL 449, AFL-CIO**

**or**

## **EI RIO HEALTH CENTER EMPLOYEES UNION**

**or**

## **NEITHER**

My unit determination is based, in part, then, upon the results of the election among the professional employees. However, I now make the following findings in regard to the appropriate unit:

1. If a majority of the professional employees vote for inclusion in the unit with nonprofessional employees, I find that the following will constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time professional employees including dental hygienists, certified nurse midwives, certified nurse midwives – school based, family nurse practitioners, adult nurse practitioners, pharmacists, dentists, physicians, including physician - family medicine, physician - internal medicine, physician - internal/infectious diseases, physician - pediatric, physician - urgent care, physician - OB/GYN, and Unit Chiefs, and nonprofessional employees, including accounts receivable specialists 3, asthma evaluation assistant, behavioral health specialists 2, behavioral health specialists 3, behavioral health technicians, building maintenance technicians, certified nursing assistants, care coordinator 1, charge entry 1, clerk-receptionists, coder reviewer educator, community health advisor, community health advisor II, customer care coordinators, customer care representatives, dental administrative assistants, dental assistant 3, dental authorization clerks, dental environmental aides, dental hygienists, dental office specialists, dental member service representatives, dental receivable specialist 1, director of volunteer services, driver-couriers, eligibility coordinators, eligibility outreach employees, health care advocate & coordinator, health educator, information services clerical support, laboratory report coordinator, Licensed Practical Nurses (LPN's), LPN leads, material-purchasing assistant, medical assistants, medical laboratory assistants, medical office specialists, medical-dental record clerks 2, medical records clerk 1, medical records clerk 2, medical receivable specialists 2, medical services representatives, medical technologists, medication coordinator, member services representatives, member service schedule coordinator, member services specialists, network technicians, nutritionists, nutrition aide 2, OB plan monitor, office assistants, outreach coordinators, patient advocates, patient prep specialists, pharmacy technician 2, pharmacy technician 3, Pima Community Access Program customer care coordinators, prescription delivery drivers, radiological technicians, receiving-distribution clerks, referral clerks, registered nurses, research project coordinators, respiratory therapists, sterilization technicians, switchboard operators, treatment adherence coordinator, unit clerks, ultrasound technicians, employed by the Employer at its facility in Tucson, Arizona; but excluding all other employees, probationary employees, temporary employees, seasonal employees, provisional employees,

training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act.

2. If a majority of the professional employees do not vote for inclusion in the unit with nonprofessional employees, I find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

#### **UNIT A**

All full-time and regular part-time professional employees, including dental hygienists, certified nurse midwives, certified nurse midwives – school based, family nurse practitioners, adult nurse practitioners, pharmacists, dentists, physicians, including physician - family medicine, physician - internal medicine, physician - internal/infectious diseases, physician - pediatric, physician - urgent care, physician - OB/GYN, and Unit Chiefs employed by the Employer at its facility in Tucson, Arizona; but excluding all nonprofessional employees, all other employees, probationary employees, temporary employees, seasonal employees, provisional employees, training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act.

#### **UNIT B**

All full-time and regular part-time nonprofessional employees, including accounts receivable specialists 3, asthma evaluation assistant, behavioral health specialists 2, behavioral health specialists 3, behavioral health technicians, building maintenance technicians, certified nursing assistants, care coordinator 1, charge entry 1, clerk-receptionists, coder reviewer educator, community health advisor, community health advisor II, customer care coordinators, customer care representatives, dental administrative assistants, dental assistant 3, dental authorization clerks, dental environmental aides, dental hygienists, dental office specialists, dental member service representatives, dental receivable specialist 1, director of volunteer services, driver-couriers, eligibility coordinators, eligibility outreach employees, health care advocate & coordinator, health educator, information services clerical support, laboratory report coordinator, Licensed Practical Nurses (LPN's), LPN leads, material-purchasing assistant, medical assistants, medical laboratory assistants, medical office specialists, medical-dental record clerks 2, medical records clerk 1, medical records clerk 2, medical receivable specialists 2, medical services representatives, medical technologists, medication coordinator, member services representatives, member service schedule coordinator, member services specialists, network technicians, nutritionists, nutrition aide 2, OB plan monitor, office assistants, outreach coordinators, patient advocates, patient prep specialists, pharmacy technician 2, pharmacy technician 3, Pima Community Access Program customer care coordinators, prescription delivery drivers, radiological technicians, receiving-distribution clerks, referral clerks, registered nurses, research project coordinators, respiratory therapists, sterilization technicians, switchboard operators, treatment

adherence coordinator, unit clerks, ultrasound technicians, employed by the Employer at its facility in Tucson, Arizona; but excluding all professional employees, dental hygienists, certified nurse midwives, certified nurse midwives – school based, family nurse practitioners, adult nurse practitioners, pharmacists, dentists, physicians, including physician - family medicine, physician - internal medicine, physician - internal/infectious diseases, physician - pediatric, physician - urgent care, physician - OB/GYN, and Unit Chiefs, all other employees, probationary employees, temporary employees, seasonal employees, provisional employees, training program employees, confidential employees, managers, security officers, and guards and supervisors as defined in the Act.

There are approximately 451 employees in total in the units found appropriate.

### **DIRECTION OF ELECTION**

I direct that an election by secret ballot be conducted in the above voting groups at a time and place that will be set forth in the notice of election that will issue soon, subject to the Board's Rules and Regulations.<sup>2</sup> The employees who are eligible to vote are those in the voting groups who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the voting groups are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collective-bargaining purposes by:

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<sup>2</sup> Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. The notices shall remain posted until the end of the election. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays. A party shall be estopped from objecting to non-posting of notices if it is responsible for the non-posting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

**AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL  
EMPLOYEES, LOCAL 449, AFL-CIO**

**or**

**EI RIO HEALTH CENTER EMPLOYEES UNION**

**or**

**NEITHER**

**LIST OF VOTERS**

In order to ensure that all eligible voters have the opportunity to be informed of the issues before they vote, all parties in the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, I am directing that within **seven (7) days** of the date of this Decision, the Employer file with the undersigned, two (2) copies of election eligibility lists containing the full names and addresses of all eligible voters in the voting groups. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). The undersigned will make these lists available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, the undersigned must receive the lists at the NLRB Regional Office, 2600 North Central Avenue, Suite 1800, Phoenix, Arizona, 85004-3099, on or before **June 11, 2008**. No extension of time to file this list shall be granted except in extraordinary circumstances. The list may be submitted by facsimile or E-mail transmission, in which case only one copy need be submitted. The filing of a request for review shall not excuse the requirements to furnish this list.

**RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington, DC, by the close of



**business at 5:00 p.m. (EDT) on June 18, 2008.** The request may be filed electronically through E-Gov on the Board's website, [www.nlr.gov](http://www.nlr.gov),<sup>3</sup> but may **not** be filed by facsimile.

Dated at Phoenix, Arizona, this 4<sup>th</sup> day of June 2008.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director  
National Labor Relations Board, Region 28

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<sup>3</sup> Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**. To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the **File Documents** button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the **Accept** button. Then complete the E-Filing form, attach the document containing the request for review, and click the **Submit Form** button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under **E-Gov** on the Board's web site, [www.nlr.gov](http://www.nlr.gov).